WP(C) 250/2007
BEFORE
THE HON'BLE MR. JUSTICE B.K.SHARMA

Heard Mr. A. J. Atia, learned counsel for the petitioner as well as Mr. P. Baruah, learned counsel representing the respondents. I have also heard Ms. R. Chokraborty, learned Add. Sr. G.A., Assam. Mr. A.K. Goswami, learned Sr. counsel assisted by Ms. P. Sharma, learned counsel has made submissions on behalf of KAAC.

The matter relates to transfer and posting of the petitioner and the respondent No. 7. The petitioner was first transferred to Karbi Anglong District by Annexure-1 communication dated 30.01.06. Thereafter he joined at Karbi Anglong under the Autonomous Council. After joining there, he has also been subjected to transfer within the District.

By the impugned communication dated 08.01.07, the petitioner has been transferred from Karbi Anglong to Nagaon vice the respondent No. 7. It is the case of the petitioner that since he has joined at Karbi Anglong District only recently as per order dated 13.01.06, he cannot be transferred before completion of normal tenure of three years as envisaged in Annexure-VI Office Memorandum dated 04.02.02. On the other hand, it is the case of the respondents that the petitioner having been transferred to Karbi Anglong District as per Election Commission's guidelines, same was temporary in nature without any concurrence of KAAC and accordingly the normal tenure of three years will not be applicable in the instant case.

In the affidavit filed by KAAC, it is their stand that the petitioner was transferred to Karbi Anglong District on temporary basis as per the guidelines issued by the Election Commission at the eve of the last election. According to the leaned counsel for the Council, once the purpose is fulfilled, the petitioner is liable to be transferred from Karbi Anglong.

In paragraph-6 and 10 of the affidavit, following statements have been made:

6. That as regards the statements made in paragraph-5 and 6 of the writ application, I say that the petitioner was transferred and posted at Rongmowe Development Block vide order dated 30.01.06 issued by the State Government. The said order of transfer was issued in compliance of guidelines issued by the Election Commission and also in the interest of public service. The Council authorities had accepted such postings including the posting of the petitioner subject to certain terms and conditions including that the Government of Assam shall withdraw the services of the officials of the Council so released after the Election process is over and the said stand is reflected in Annexure-H order dated 01.03.06 of Misc. Case No. 1358/07. However, the stand of the Council as indicated in the order dated 01.03.06 was not accepted in respect of all the officials so released. The deponent states that the transfer of the petitioner from Rongmowe Developmen t Block to Amri Development Block was an intra- Council transfer.

10. That the deponent states that vide communication dated 18.09.06 the Council authorities had communicated no objection of the Council to the State Government as regards posting of the respondent No. 7 as Junior Engineer in any Development Block under District Rural Development Agency in Karbi Anglong by way of transfer in the same capacity from other districts of Assam, subject to the posting of respondent No. 7 against specific vacancy. The respondent No. 7 prayed for acceptance of his joining report before the Principal Secretary, Karbi Anglong Autonomous Council on 09.01.07 and thereafter, letter dated 11.01.07 was issued by the respondent No. 5 accepted the services of the respondent No. 7 with effect from the date of his taking over charge vice the writ petitioner released as per Government Notification No. PBB/322/2006/4 dated 08.01.07. It is stated that the submission of joining report in the Council's office is provisional and is subject to taking over formal charge in terms of the Assam Financial Rules in the concerned establishment were a Government servant is posted. The respondent N

o. 7 has not, till date, taken over charge in terms of Assam Financial Rules and the writ petitioner is continuing in the very same post from which he is sought to be transferred by the order dated 08.01.07. The respondent No. 7 had not joined at his place of posting after taking over charge before the interim order dated 19.01.07 was passed by this Hon'ble Court. It is also relevant to state that the respondent No. 2 was released from his earlier place of posting only on 16.01.07. The deponent states that the writ petitioner was not released from the post he was holding and the respondent No. 7 had also not taken over charge in terms of the Assam Financial rules and as such, the transfer order dated 08.01.07 was not given effect to when the Hon'ble High Court passed the order dated 19.01.07.

The respondent No. 7 in his affidavit as well as in the application filed for vacating the stay order (Misc. case No. 1358/07) has contended that the petitioner having been transferred to Karbi Anglong District on temporary basis, cannot claim the benefit of the aforesaid Office Memorandum dated 04.02.02 prescribing normal tenure of three years. He has also referred to no objection certification issued by the Council towards his transfer under it. It will be pertinent to mention here that as per understanding between the State and the said Council, in the case of transfer and posting, prior concurrence of the Council is required to be obtained. While the petitioner and others were transferred to Karbi Anglong District at the eve of the election as per Election Commission's guidelines, no such concurrence was obtained.

From the affidavit filed by the Council it is seen that the stand of the Council is that the transfer and posting of the Officers to the District were made on temporary basis as per the Election Commission's guidelines and that once the election is over, the incumbents transferred to the District are liable to be retransferred. However, in paragraph-6 of the affidavit which has been quoted above it is stated that the stand of the Council was not accepted in respect of all the officials.

From the materials on record, it appears that the respondent No. 7 has already been released from Nagaon pursuant to the impugned order of transfer and he ahs also reported for duty in his place of posting, i.e. in the District of Karbi Anglong. However, in view of the interim order passed by this court a stalemate has been created in which both the respondent No. 7 and the petitioner claim that they are continuing in their services in the District.

Ms. R. Chokraborty, learned State counsel as produced the records which has revealed that the transfer and posting by the impugned notification dated 08.01.07, has been taken recourse to as per the direction of the Minister of the department.

From the discussion made above and on the basis of the respective pleadings and the materials on record, the following facts have emerged:

1) It is the stand of the District Council that the respondent No. 7 is acceptable to them and in fact, it is their contention that NOC has already been issued a copy of which has been annexed as Annexure- E to M.C. No. 1358/07. Annexure -E was issued on 18.09.06.

2) As per the affidavit filed by the District Council, the respondent No. 7 is acceptable to them. However, at the same time, it has been stated in paragraph- 6 of the affidavit that the stand of the Council that once the election is over the officials could be released from the Council, was not accepted in all cases.

3) While it is the stand of the Council that transfer of various officers to the Council at the eve of the election as per the Election Commission's guidelines was temporary in nature and that the incumbents are liable to be reverted back once the election is over, it is the stand of the State that such transfer was not temporary in nature. This stand of the State counsel is reflected in the Judgment and order dated 10.05.06 passed in W.P.(C) Nos. 1212/06, 222/06 and 2313/06

By the aforesaid order dated 10.05.06 passed in the aforesaid three writ petitions, the matter was remanded back to the authorities for a decision with necessary consultation.

In view of the above, I am of the considered opinion that this case also needs consideration of the Commissioner and Secretary to the Govt. of Assam in the Panchayat and Rural Development Department who upon making consideration of the relevant facts and materials on record shall pass appropriate order keeping in mind the factual aspect of the matter discussed above. The said Commissioner and Secretary shall decide the matter as expeditiously as possible, but at any rate not later than 31.07.07. Since both the incumbents are at the same place of posting under the authorities of the Council, it will be appropriate for the Commissioner and Secretary to decide the matter as expeditiously as possible. If the Commissioner and Secretary requires to have consultation with the Council, same may be carried out in accordance with law.

Writ petition stands disposed of.